

## **March 27, 2008 Minutes of Bigfork Land Use Advisory Committee**

Committee members present: Phil Hanson, Darrel Coverdell, John Bourquin, Shelley Gonzales, Chuck Gough, Gary Ridderhoff, Paul Guerrant and 28 members of the public.

Chairman Bourquin called the meeting to order at 4: 03 pm. The Agenda was adopted as emailed (m/scCoverdell/Ridderhoff)

The minutes for January 31, 2008 were approved as corrected (m/sc Gough/ Coverdell).  
The minutes for February 14, 2008 were approved as corrected (m/sc Coverdell/ Guerrant).

The minutes for February 28,2008 were approved as corrected (Guerrant/Gough).

### **ADMINISTRATOR'S REPORT:**

**A. Application Status:** Calaway/Whitaker Conditional Use Permit was approved by the Board of Adjustment with all conditions included.

**B. Commissioner Appointments:** The Commissioners approved 2 new members to the Planning Board, James Heim, Lakeside and Marie Hinkley-Auclaire, Kalispell. The commissioners approved the appointment of Chuck Gough to BLUAC

**C. BLUAC Elections:** Three people have filed for positions on the Bigfork Land Use Advisory Committee 3-year term, John Bourquin, Gary Ridderhoff, and Al Johnson. One person filed to fill the two-year term, Charles Gough.

Prior to reviewing applications, Chairman Bourquin reviewed the Public Ground Rules as follows:

- Robert's Rules of order shall be followed which is also a Flathead County recommendation
- Comments from the public will only be heard while the "public comment" period is open
- All public, staff, and applicant comment including questions shall be addressed at all times to BLUAC. BLUAC in turn will involve the appropriate Flathead County staff and/or applicant as needed
- Public comment in favor and opposed to the application will be heard simultaneously
- Public comment shall be limited to a maximum of 5 minutes per person
- Each individual from the public wishing to speak during the open public comment period shall be allowed to speak only once per application

- Once the public comment period is closed, no further comment or questions from the public will be taken by BLUAC unless they are written, involve new information, and submitted to the Chair prior to BLUAC voting on the application

At the conclusion of the application process, if you have additional questions or still have concerns, you are encouraged to voice them when the County Planning & Zoning Board or the County Board of Adjustments hears the application, which is usually in 2 to 4 weeks.

### **APPLICATIONS:**

**A.** A Zone Change request in the Bigfork Zoning District by Stan Mildren from AG-10 (Suburban Agricultural) to SAG-5 (Suburban Agricultural). The property is located at 395 Swan River Road and contains 59.09 acres.

Committee member Gary Ridderhoff chose to recuse himself from the committee decision and was seated in the public section.

**Staff:** Andrew Hagemeyer reviewed the application for the Committee. He described the location on Swan River Road, east side. The property is across the road from the Bethany Lutheran Cemetery to the west. He noted there is little difference between SAG-10 and SAG-5 zoning with the exception of acreage. He described (Page 3 of Staff Report) the zoning surrounding the property with SAG-5 to the south, AG-40 to the east and north, SAG-10 to the west. Most of the area is large lot residential with individual septic and water systems. The application complies with the land use plan. There is good access and a bike trail to the north. The intersection with MT Hwy 83 and Swan River Road has safety features such as a flashing light and lower speed limit with crosswalks. Staff recommends approval of the application. If the applicant were to subdivide, there would be conditions and likely an extension of the bike trail.

**Applicant:** Erica Wirtela, Sands Engineering, represented the applicant who lives out of state. The property belonged to his mother. She stated that she agreed with the staff report.

### **Committee:**

**Bourquin:** What will happen with the old barn? **A:** Don't know. A gentleman has expressed interest in leasing the property and might want to keep it.

**Gough:** What about the shallow ground water on the property? **A:** Development would more likely be on the bench. To develop the lower areas, testing would be necessary. More than likely development would be closer to the road.

**Hanson:** The application refers to PUD's. What are the intentions there? **A.** We include that information as a worst-case scenario because the planning staff looks at it that way. The three options for development was included for clarification to staff. I think with the limitations of the property it would never reach those numbers. I know of no plans to subdivide.

**Bourquin:** Just to clarify, how many lots would be possible with 59.09 acres? **A.** There would be 11 lots. With a 36 acre set aside possibly 18 lots and 24 maximum with a PUD.

**Coverdell:** Even with no subdivision plans, how many access roads would there be to Swan River Road? **A.** Access is controlled by two agencies and have to be 600 feet apart. A subdivision has to have internal roads.

**Hanson:** If you are not considering a PUD/cluster development, why change from SAG-

10 to SAG-5? **A.** The client can get 11 lots rather than the 5 allowed in SAG 10.

**PUBLIC COMMENT:**

**Bret Hughes:** I resided at 285 Swan River Road for over 20 years. My property borders the entire north property line of the Mildren property. I feel that living in the Swan River Road area or neighborhood for as long as we have that I have knowledge and a feel for the character of the area. I have seen many changes in the area and feel that in most cases a rural or semi-rural lifestyle and atmosphere has been kept here. I strongly oppose any type of zone change that would have the possibility of a cluster development that would, or could, allow the possibility of 18 plus home sites on a piece of property this size, in this neighborhood. I strongly feel that 10 acre zoning for this piece of property is the proper zoning for the Mildren property. (Written comments attached)

**Claudia Bielenberg Thorsrud:** I am joint owner of a bordering property with my husband and also trustee of another landowner, which owns substantial land bordering the Mildrens. I think it is obvious that our neighborhood one of the most desirable and nicest neighborhoods in the Valley, would be negatively impacted by the proposed zoning change to the Mildren 59+ acre property. The current zoning is adequate and will allow for common sense development in this area, and can easily support new building that the SAG-10 currently provides. Issues such as water, sewer, garbage and trash, traffic, eyesores (junk), noise, maintenance (weed control) and just the number of people( would change this neighborhood forever. I think for the BLUAC and neighbors of the Mildren's to approve and allow development as proposed is not only unreasonable, it is unintelligent. (Written comments attached)

**Kirt Taylor:** We border the Mildren property on the South side and have lived there for 20 years. We are opposed for the same reasons as the previous neighbor's comments. I would add that high density is not common to our area and concerned that the traffic of 18 to 20 more cars would create a hazard. There is a lot of foot and horse traffic in this area. I'm also concerned about the low ground water areas of this property. This would create density in a very visible area along the road. The intersection of MT Hwy 83 and Swan River Road hasn't changed in 20 years and we see two to three wrecks a year on Hwy 83. I drove a full section (1/2 mile each direction) from the Mildren property and counted 35 houses in one mile. If 18 to 24 houses were built on 20 acres it would make a huge difference in the character of the area. There is no cluster housing in the current growth plan proposed for this area.

**Becky Hughes:** (Showed a photograph of the Mildren farm). I have lived my entire live (50 years in October) next to Delbert and Selia Mildren. I know the history of the land we are talking about here tonight. If we don't visit the past, we don't give respect to the persons who sacrificed their lives to preserve this land. The land not only has grazed domestic livestock, it is also home to deer, coyotes and a whole bunch of pocket gophers. I am not in favor of changing the zoning on this property. I believe that people have a right to do with their property what they wish, but you shouldn't do something with your property that is going to affect the lives of other people in a negative way. In 1993 people had a chance to say what zoning they wanted for their property and this land was zoned SAG-10. This property has a very high water table. Our adjacent property has been unfarmable in the spring any times in the years we have lived here. Sewer would be

impossible on the lower parts of this pasture. There are no subdivisions in this area with 24 houses on a ¼ mile of hill. How can you use the words cluster in one paragraph and elbowroom in the next? These are my major points: 1) Traffic is dangerous on this narrow country roadway without any shoulders for bikers and walkers. 2) Lighting is a concern. Now you can look out and view stars, you don't have the light pollution created by subdivisions. 3) Water and sewer are essential factors that must be considered for the surrounding wells and our property since it will flow into our property. 4) Noise would increase. This has been a fairly quiet neighborhood and a zone change would affect that quality of our lives which is one of the reasons we enjoy living here. 5) All the SAG-5 in this area exists to the South of us. 6) There are no trees on this property to provide buffers. We have a clear view of the mountains and value that. 7) SAG-5 zoning does not match the character of the neighborhood. 8) Celila gave her word when she zoned this property SAG-10 almost 15 years ago and I'm counting on that word to still mean something to this neighbor today. I sincerely hope that you respect the wishes of the closest neighbors to this proposal and respect their views. (Written comments attached)

**Lynn Taylor:** The barn on this property has been photographed by Montana Magazine we see artist painting the barn and photographers taking pictures. The bike path does not go through Selia's property for a reason. She refused to allow it. That could be extended if the zoning is changed. I would ask you not to introduce this drastic a change in our current lifestyle.

**Carola Serucek:** I've lived here for 54 years, north of this property, and we have drilled three wells through 125 feet of sandy loam. We do not have good drainage. The neighbors had to put their septic above ground. Why aren't there covenants for this? I definitely oppose the zone change.

**Don Angst:** I am the property owner west of this property at 350 Swan River Road. We are zoned SAG-10 and I believe it will change the change the character of the area. I'm concerned about additional traffic and the safety of school children that walk or ride their bikes to Swan River School, plus those who ride their horses on the road. I am concerned that it could affect the property values of existing homes for all of Swan River Road. I'm concerned about the resources of well water and how this would affect our property. The majority of developed properties on Swan River Road are 5 acres or larger. This is a serene, country-fied environment. We are all neighbors and want to be good neighbors, but we also want and need to be guardians of the land that the good Lord has given us. Look at all the homes in Somers. We don't have a shortage of clustered homes. This requires a lot of thought and we need to be real careful of the decisions here.

**Tom Welch:** I live at 475 Swan River Road, a half mile to the south. We would like to see the zoning stay the same. I'm in the building business, but I know that some things need to stay as they are. I don't think this would be fair to the neighbors. We bought our property to have some space and developing this property would change our view dramatically.

**Edd Blackler:** My observation is that the value of property is important. It does not seem right to benefit one property to the detriment of many others. I think that would be a disservice to the whole neighborhood.

**Doug Averill:** I was involved in the drafting of the original Bigfork Neighborhood Plan. The sentiment we received from landowners on Swan River Road in 1992-93 was adamantly to preserve large acreage, keep the area in larger tracts. This baffles me. How

can the county look at an area that is prime agricultural area and poor soil for septic and recommend higher density? This doesn't seem consistent with what the county has been pushing.

**Gary Ridderhoff:** I am 50 feet short of notification distance from this property. I think all my neighbors have spoken eloquently. I wanted to point out that the smaller parcels on the north side of the Mildren property were created 20 to 25 years ago before the 1993 Bigfork Neighborhood Plan was implemented. These are grandfathered, non-conforming lots in AG40 zoning. To say the Mildren property is compatible with SAG-5 zoning is wrong.

**Al Johnson:** Asked how close the property is to the Swan River? It was estimated to be 1/4 to 1/2 mile. Johnson stated he lives at 789 Swan River Road on riverfront property. In the 16 years I have lived here the water quality of Swan River has seriously degraded. We now get algae blooms never seen before. To sink septic in high groundwater areas is bound to degrade the river even more. One may not have a major impact but many would. My concern is for the water quality of Swan River and the underlying aquifer.

## **PUBLIC COMMENT CLOSED**

### **COMMITTEE:**

**Coverdell:** I understand that two thirds of the property has high ground water. The front of the property near Swan River Road would be the most logical building sites. How many homes would be built on that knoll? **A.** Don't know.

**Gonzales:** How much frontage on Swan River Road? **A.** About 1,300 feet.

**Gough:** What is the maximum number of units on SAG-10 with a PUD? **A.** Staff: with a 50% bonus, about 7 homes, with a PUD and 70% open space about 7 homes. Could the open space be farmed? **A:** Yes

**Wirtela:** Those are not the owners intentions. They will be here on April 9<sup>th</sup> for the Planning Board meeting. They wanted more than the 5 lots that would be allowed with existing zoning. Traffic and septic are all speculation at this point. Now we look to see if the zoning is appropriate and would it be appropriate for ground water.

**Hagemeier:** It's important that the public speak at these meetings and you are encouraged to attend the meetings at the Planning Board and the Commissioners.

### **COMMITTEE:**

**Hanson:** The potential for high density is what bothers me. I think we need to shut the barn door now. We need to pay attention to what the neighbors have to say.

**Coverdell:** I'm looking at the 10 acres and believe the frontage could only be divided into 3 or maybe four lots. With 5 acres maybe 8 lots. The east property is not appropriate for SAG-5 zoning.

**Guerrant:** I'm not seeing any reason to change, other than just to change for the sake of change.

**Gough:** With the possibility of a future PUD, my concern is the introduction of more wells and septic.

**Gonzales:** I agree with the others.

**Bourquin:** I'm concerned with the water table and realize this is just the first step but it does open the door. I would like more information as to what are the real build-able lots. What are we really talking about here? I'd like some better answers.

**Phil Hanson** moved for recommendation of denial for the application. Gough seconded the motion.

**Bourquin:** My only comment is that we had 12 people speak in opposition and none in favor.

Motion passed unanimously (Ridderhoff recused).

Ridderhoff returned to the committee table for the remainder of agenda items.

This application will be heard by the Flathead County Planning Board, Flathead County Planning & Zoning Office, 1035 First Avenue West, Kalispell, at 6:00 p.m. on April 9, 2008.

**B.** A public hearing to adopt the revisions to the Bigfork Neighborhood Plan and to include the BFNP as part of the Flathead County Growth Policy. The BFNP revisions need to be in general compliance with the Flathead County Growth Policy and Montana state law. A copy of the draft BFNP is available at the Flathead County Planning & Zoning Office.

**Staff:** BJ Grieve reviewed the process to move forward with the BNP. After recommending approval of the draft by BLUAC, the Planning Board will review it and hold public meetings. Their recommendation is forwarded to the Flathead County Commissioners for further public meetings and either final approval or denial of the plan. Grieve noted that he had provided input on the earlier draft and many of the recommendations were included in the draft after additional workshop meetings by the Bigfork Steering Committee and BLUAC. He advised that all written comments should be addressed to him at:

[bgrieve@flathead.mt.gov](mailto:bgrieve@flathead.mt.gov)

FAX-406 751-8210

or snail mail:

BJ Grieve

Flathead County Planning and Zoning

1035 First Avenue West

Kalispell, MT 59901

Grieve stated that after sending the BNP to the numerous departments in the County for review, he received only one comment. Dave Prunty, Public Works Director, in reference to "green box" goals and policies on page 82, the green boxes are not to be improved. The property is leased from MDOT and screening is impossible because of site size and safety. The site may be consolidated (closed) due to operation costs. Grieve suggested rewording or eliminating policy 33.4. As to the Transportation section, page 59-61, Prunty suggests adding the goal of establishing a Rural Special Improvement

District to undertake the expense of paving roads. In addition, their projections are that 15.9 people would be needed to provide onsite monitoring.

In the Implementation Strategy section, page 83, we overlooked utilizing zoning and the zoning map amendment process to implement the Plan. Grieve has included in the staff report suggested language to make this addition to the BNP.

As to the Future Growth Designation Map, he noted that in the area of the Little Brown Church there is a parcel that is still zoned R-1. He suggested it might be more appropriate to designate that area for future commercial use. Since you have designated the area north of MT Hwy 82 as future commercial, you might reduce that area to compensate for the addition of this area.

**Gonzales:** Given the text issues, what do you recommend? Should we hold another workshop, change now, or pass on as is?

**Grieve:** The Planning Board will likely make changes and consider those in the staff report. You can forward now based on what has been approved from all your workshops and the Planning Board will consider it as is.

**Gough:** As to the solid waste comments by Prunty and his objections to lack of funding, I don't see why we can't ultimately achieve the goal. The funding issues do not stay static and will always be changing.

**Bourquin:** As to Prunty's suggestion of a RSID, I'm of the opinion that Bigfork pays its fair share of taxes, perhaps even more. I would like to see where the tax money is being spent.

**Grieve:** Can we study revenue vs expenditures? It's not impossible but there may be a cost to collect that data.

#### **PUBLIC COMMENT:**

**Elna Darrow:** I suggest the BNP draft be forwarded as is and let the Planning Board address staff comments. Maybe the Planning Board will be content with that.

**Edd Blackler:** Solid Waste disposal is very important in this area. Should we consider an alternate site?

**Guerrant:** If the county proposes closing down a green box site, will there be public comment? Can we protest any closing?

**Grieve:** Yes, definitely there will be public hearings. Actually, this is happening in Marion now.

**Craig Wagner:** The County is going to hire 15.9 people to monitor green boxes?

**Grieve:** Not at this time, it was just a suggestion.

**Doug Averill:** The site we have is adequate, and improvements can be done. We have a group of volunteers to do it. I believe Bigfork would rather improve the solid waste site rather than lose.

**Al Johnson:** There is merit to Elna's suggestion of sending the BNP draft along as is. The Planning Board may be happy with the changes staff has proposed.

#### **PUBLIC COMMENT CLOSED**

**Guerrant** moved that the Bigfork Neighborhood Growth Plan draft be forwarded as is to the Planning Board with the further recommendation that they accept staff's recommended changes to the 1) Proposed Future Growth Map in the area of the Little

Brown Church, 2) solid waste site and 3) Implementation Policy utilizing zoning and the zoning map amendment process. **Hanson** seconded the motion.

**Gough:** Where does that leave the green boxes? General consensus, move ahead and see what the outcome is.

Motion was called and passed unanimously.

#### **OLD BUSINESS:**

**A. Sign violation status:** Bourquin related a conversation with Chief Deputy County Attorney, Jonathan Smith. Smith indicated that the County has several other areas where violations exist and the county wants to do all violations at once. Bourquin explained that BLUAC, on advice from the Planning Office, took action many months ago and those who complied are beginning to ask why others are able to get away with violations. Bourquin suggested to Smith that the county use Bigfork as a starting point and get on with it. Smith did not have a comment.

**B. Erica Wirtela – Touris/Sneed:** Bourquin notified Wirtela that this portion of the meeting would be recorded. Wirtela responded that she was also taping. Wirtela noted that at the February 14, 2008 Commissioner's meeting that Gonzales stated she might have some ideas for a solution or working out an agreement. Wirtela had no solutions or ideas to offer.

**Bourquin:** Any suggestions from any of the committee members at this time?

**Gough:** I don't know that it is appropriate at all to discuss this any further because her client has sued this group and the county. As soon as lawyers get involved, then I think it should be lawyers involved, and I think this kind of discussion is entirely inappropriate.

**Wirtela:** The comments and the letters that went back and forth happened before this took place.

**Gough:** This is the most recent thing that has happened and probably the controlling factor.

**Bourquin:** I did clear this with Jonathan and I understand your concern. I guess my comment is that you are a professional planner and we are not. BJ and company, and I wish they had stuck around, they are professionals. I would suggest that you and the planning staff take another run at it see what the professionals and yourself can come up with.

**Wirtela:** Well, I guess with regard to you guys coming under litigation, there is always a potential for settlement and an agreed upon task could be taken. That's what he's looking for.

**Bourquin:** And I don't think we're in a position to go there tonight.

**Wirtela:** That's fine.

**Bourquin:** The purpose of this meeting was to see if there were any suggestions that you had or the board had and obviously we don't. So my recommendation is that you go back to the professionals, the county, and see what they have to say.

**Wirtela:** Well, I can't come back with the exact same application and frankly nothing can happen. He can't get additional people to join in on that, and it doesn't look as though the Steering Committee is interested in changing the designation on the master plan map in designating that parcel industrial. Would a zone change application to commercial designation be entertained by this board?



**Bourquin:** I don't know. You would have to make a formal application, go through the process, and staff report, just like we have always done in the past.

**Wirtela:** Ms Gonzales, you had indicated to us in the parking lot that you had gone through your zoning book and that you may have some ideas as to what might be a plan B.

**Gonzales:** Well at this juncture, as Chuck said, with the litigation, I have nothing to offer.

**Wirtela:** I guess I don't know what else we can do, but this is on your suggestion that we came. We were interested to hear what you had to say.

**Bourquin:** You asked to come to the meeting prior to all the litigation starting and I agreed to that. I did clear it with Jonathan Smith. That was the purpose of you coming and apparently there are no new ideas, so there you are.

**Dennis Kelleher:** I have a comment.

**Bourquin:** Public comment is closed, I'm sorry.

**Kelleher:** It was never open.

**Bourquin:** No not on this subject, that's correct.

**Kelleher:** So there is no public comment on every action that the board takes?

**Bourquin:** No, just on applications only. There will be public comment open again at the end of the meeting. You can talk about anything.

**C. Village Parking:** Bourquin asked Bruce Solberg to update the committee on discussion regarding solving the parking problem in the village.

**Solberg:** We all realize that parking problems in the Village has been going on for over twenty years. Members of BLUAC, BSC, CFBB, interested merchants from downtown, and the C of C got together to discuss solutions to the parking problem in the village. It was generally agreed that a structure was not an option at this time. It's very long term and very, very expensive. There was discussion of the possible use of a lot in the village but not a likely option. One-way traffic was an option discussed that would start at Electric Avenue Gifts and loop around to Osborn and back to Electric Avenue. We don't know the ramifications of the Fire Department or other safety departments, or required width of the streets. Discussion about employees taking up parking spaces has always been a problem but there aren't any viable solutions at the present time. We're still working on it.

**Guerrant:** At the meeting we also discussed the subject of in-lieu fees?

**Gough:** At the suggestion of the group, I contacted county officials and there are no regulations that allow for this. It would take a resolution of the County Commissioners and the funds would go to the County for distribution since Bigfork is not an established entity and we would lose local control of how the dollars were spent.

**Gonzales:** Is someone looking into the feasibility of the one-way parking and is there a time frame when they could get back to us with findings?

**Solberg:** Joe Maggadino was at that meeting was going to follow up with advice from the County. Word from Joe is that he has been unable to contact the person who may have the answers to those questions. Some others who were at the meeting are talking to individuals about the possibility of land available. I will follow up personally.

**D. Compression Brakes:** Funding been approved by the County and the State.  
**Ridderhoff:** Signs are up on MT Hwy 83.

## **NEW BUSINESS:**

### **A. Village/Township concept:**

**Bourquin:** Joe Brenneman is investigating the possibility of creating township/village in state stature. As many of you know, the investigation into incorporation for Bigfork resulted in such a high tax rate for a small number of people, the idea was dropped. The idea of a middle ground or alternative is being investigated.

## **PUBLIC COMMENT:**

**Dennis Kelleher:** I have two questions. Under Roberts Rules of Order, can you tell me where the break is when you are required to take public comment and when you are not, when it is listed as an agenda item? When a board sits in front of people and says it has been placed in the hands of lawyers and should let lawyers handle it. Litigation is an adversarial process. Mediation is the only process where it becomes a win, win situation for both sides. In the interest of public participation, you should consider those aspects of your comments where you say we should let lawyers should handle things that lawyers talk about, and that was not a solution to a problem.

**Jack Paulson:** This request from Joe Maggadino for a variance was supposed to be on the agenda tonight and it's not on the agenda.

**Bourquin:** I think you received the same letter as another gentleman, who spoke to me earlier, and it shows that it was this Thursday at the Bethany Church. It's actually going to the Board of Adjustment on Tuesday, April 1<sup>st</sup>. It went before this board and was turned down on February 28<sup>th</sup> and went before the Board of Adjustment where it was continued and comes up before the Board of Adjustment again on the 1<sup>st</sup>. I just saw the letter tonight and I think someone did not put the correct information on the letter.

**Jack Paulson:** It didn't impress me. I sat here for two hours.

**Kelley Paulson:** I got the same letter. I live in Missoula and drove up here for that purpose. If you have any influence with these people, you might tell them to get their meeting times straight. I've sat here for two hours and it is quite an inconvenience.

**Guerrant:** We'll forward the letter. Secretary will copy the letter and forward to the Planning Office for their information.

**Bourquin:** I apologize to both of you for your wasted time.

## **PUBLIC COMMENT CLOSED**

Meeting was adjourned at 6:15 p.m.

Sue Hanson

BLUAC Secretary

